

Pension Governance Milestones in Canada
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The following table sets out a brief history of significant developments in Canadian pension governance over the past quarter century. This table is not exhaustive and is meant to be a quick reference of major governance developments having potential impact on the administration of Canadian pension plans. For further information on pension governance, please refer to Chapter 4 of the *Morneau Shepell Handbook of Canadian Pension and Benefit Plans, 16th Edition*.¹

Date	Development	Impact
June 1993 (appeal decision - October 1995)	<i>R. v. Blair</i> (Enfield case) – Pension Committee charged with breach of Ontario PBA for failing to supervise investment manager.	Better understanding of the duties owed by the “administrator” under the PBA and the limitations on delegation of duty.
December 1994	Dey report; “Where were the Directors?” – Commissioned by the Toronto Stock Exchange to address corporate governance issues.	Provided the pension industry with some guidelines for corporate governance that could be reviewed in developing governance for pension plans.
August 1995	<i>Imperial Oil Limited Retirement Plan (1988) and the Pension Plan for Former Employees of McColl-Frontenac Inc.</i> – case before the PCO on whether the employer was in breach of its fiduciary duties for amending its plan to (prospectively) eliminate an early retirement benefit.	The Pension Commission of Ontario provides the first articulation of the “two hats” doctrine which states that an employer plays two distinct roles vis-à-vis a pension plan and that the employer is not an “administrator”, subject to fiduciary duties, for all purposes (e.g., when it amends its plan or carries out its other employer duties).
May 1996	<i>Froese vs. Montreal Trust Co. of Canada</i> – Montreal Trust responsible for improper payments from pension fund.	Expansion of fiduciary duty to trust company despite attempt to limit liability. Overarching obligation to protect beneficiaries’ interests.
February 1997 to May 1998	PIAC – Effective Pension Plan Governance; ACPM – Governance of Pension Plans; OSFI – Guidelines for Governance of Federally Regulated Pension Plans.	Guidance on appropriate standards for governing pension plans in Canada begins to be generated by well-respected Canadian associations and regulators.
November 1997	<i>Re Unisys Savings Plan Litigation</i> (US case) – Investigating the liability of company regarding investment options available to members.	Liability for poor investment performance does not attach to sponsor where sponsor has exercised appropriate due diligence.
November 1998	Report of the Standing Senate Committee on Banking, Trade and Commerce, “The Governance Practices of Institutional Investors.”	Provided useful forum to examine questions respecting the accountability of institutional funds and the extent of their economic influence.
December 1999	ACPM/PIAC/OSFI joint recommendation on Pension Plan Governance and Self-Assessment.	Pension industry offered some widely accepted, clear written guidelines to work with to develop governance practices.

April/May 2001, respectively	Joint Forum draft Regulatory Principles for CAPs, and CAPSA Pension Governance Guideline and Implementation Tool, released for comment.	Pension industry given opportunity to participate in development of governance principles for Canadian pension and specified capital accumulation plans.
Late 2001/2002	Collapse of Enron, then Worldcom, then Global Crossing.	Leads to increased regulation of auditing and accounting in the U.S. under the <i>Sarbanes-Oxley Act</i> , with spillover effects in Canada.
May 2004	Final Guidelines for Capital Accumulation Plans (CAPs).	Guidance on the proper management of a capital accumulation plan.
October 2004	Final CAPSA Pension Plan Governance Guidelines and Self-Assessment Questionnaire.	Guidance from the Canadian Association of Pension Supervisory Authorities on the proper governance of a pension plan.
March 2004 to March 2008	Régie des rentes du Quebec collection of publications called, “Administering a pension plan well.”	Offers guidelines aimed at helping pension committees that act as the plan “administrator” to perform their role in a competent and prudent manner.
December 2006	Quebec Bill 30 legislatively requires plan administrators to adopt a written set of internal by-laws addressing governance related topics.	This was the first Canadian jurisdiction to legislate the requirement to adopt a broad written document related to governing a pension plan beyond the statement of investment policies and procedures or goals (SIPP/G).
June 2008	CFA Institute Centre for Financial Market Integrity, “Code of Conduct for Members of a Pension Scheme Governing Body.”	Recommended to public companies, government agencies, unions and pension administrators as best practice for members of pension governing bodies.
December 2009	<i>R. v. Christophe</i> , charges brought by Financial Services Commission of Ontario against the Board of Trustees and Investment Committee for breach of standard of care and non-compliance with pension legislation.	Proper record-keeping and a detailed governance system are essential to fiduciary oversight and personal liability for trustees or fiduciaries may arise if this duty is breached. In addition, in order to make prudent decisions, fiduciaries lacking specialized knowledge have a duty to seek expert advice or assistance to help them fulfill their role.
June/July 2009	Organization for Economic Co-operation and Development released the OECD Guidelines for Pension Fund Governance.	Not of significant impact in Canada. Although the Canadian government is a member of the OECD, these Guidelines did not go as far as the guidance already released by various organizations within Canada.
June 2010	FSCO policy on the Management and Retention of Pension Plan Records by the Administrator.	Provides detailed guidance respecting the issues around record retention in relation to pension plans and provides a sample format for documenting retention practices.
March 2011	CAPSA Guideline on Fund Holder Arrangements.	Highlights good governance practices related to fund holder arrangements for pension plans and pension funds.
May 2011	Manitoba regulations require pension committees to establish rules of procedure and governance.	This is the second jurisdiction in Canada, and the first common law jurisdiction, to legislate written rules of pension governance.
April 2011	FSCO policy on Administrator’s Management of Inquiries and Complaints from Plan Beneficiaries.	Clarifies the responsibilities of the plan administrator in responding to inquiries and complaints from various plan beneficiaries and other person(s) who have an entitlement under the plan. The policy also provides the administrator with specific guidance on how to effectively manage inquiries and complaints from plan beneficiaries.
November 2011	CAPSA Pension Plan Prudent Investment Practices Guideline.	Provides guidance to plan administrators on how to demonstrate the application of prudence to the investment of pension plan assets. Clearly identifies this as the role of the plan administrator.

November 2011	CAPSA Pension Plan Funding Policy Guideline.	Provides guidance on the development and adoption of funding policies. Clearly identifies this as the role of the plan sponsor.
May 2012	British Columbia Bill 38 receives Royal Assent.	Requires the plan administrator to establish a governance policy and perform regular plan administration assessments. Details to be released in the regulations.
June 2012	OECD Roadmap for the Good Design of Defined Contribution Pension Plans.	Assists countries to strengthen retirement income adequacy in a defined contribution environment.
December 2012	Alberta Bill 10 receives Royal Assent.	Requires the plan administrator to establish a governance policy and perform regular plan administration assessments. Details to be released in the regulations.
February 2013	<i>Sun Indalex Finance, LLC v. United Steelworkers.</i>	The Supreme Court of Canada addresses and further refines the “two hats” doctrine by examining the obligation of the employer to be aware of its legal requirements as plan administrator when making corporate decisions and ensuring that it deals with any conflicts which may flow from its statutory obligations.
March 2014	CAPSA Defined Contribution Pension Plans Guideline.	Supplements the CAP Guideline in relation to defined contribution plans by, amongst other things, outlining and clarifying the rights and responsibilities of various stakeholders, providing guidance regarding tools and information to provide to members in both the accumulation and decumulation phases.
July 2014	Alberta approves regulations to Bill 10. New Act and Regulations came into force September, 2014.	Provides the details of what is required to be included in a governance policy as well as other policies such as the SIPP, participation agreements and funding policies.
November 2014	Ontario approves new amendments to General Regulation 909.	Effective January 1, 2016, all SIPPs for Ontario pension plans must include information about whether environmental, social and governance (ESG) factors are incorporated into the SIPP and, if so, how the ESG factors are addressed in the plan’s investment strategy.
May 2015	British Columbia approves regulations to Bill 38. New Act and Regulations came into force September 2015.	Provides the details of what is required to be included in a governance policy as well as other policies such as the SIPP, participation agreements and funding policies.
November 2015	Quebec adopts An Act to amend the Supplemental Pension Plans Act (Bill 57).	Effective January 1, 2016, funding and annuity purchase policies are required; details to be prescribed in regulation. In addition, as of January 1, 2016, plan administrators are required to include, in internal by-laws, measures to be taken to quantify and manage plan risks.
December 2016	CAPSA publishes revised version of the Pension Plan Governance Guidelines and Self-Assessment Questionnaire together with significantly expanded FAQs.	CAPSA’s review, with the assistance of an Industry Working Group, took two years and resulted in increased clarity and further tools for plan administrators to use in governing their pension plans.
May 2017	Ontario announces new regulatory framework for DB plans which includes a requirement for plans to develop funding and governance policies.	Legislation initially expected to have an effective date of December 31, 2017. Amendment to the PBA made but not yet proclaimed in force and there has not yet been any prescribed content for such policies.
July 2018	CAPSA issues a consultation draft of an updated Defined Contribution Pension Plans Guideline	Submissions were due by September 6, 2018. Some of the revisions are controversial and it is unclear when the final revised Guideline will be released and what it will contain.

ⁱ The 16th Edition of the Morneau Shepell Handbook, published by LexisNexis Canada, is updated effective as at July 31, 2016.